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Supreme Court
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No. SCWC-30718

IN THE SUPREME COURT OF THE STATE OF HAWAII

STATE OF HAWAII, Respondent/Plaintiff-Appellee,

vs.

KEVIN M. YAMAHATA, Petitioner/Defendant-Appellant.

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS
(ICA NO. 30718; CASE NO. 1DTA-10-02094)

CONCURRING AND DISSENTING OPINION BY ACOBA, J.

I would vacate the September 12, 2011 judgment of the Intermediate Court of Appeals (ICA) in support of its August 22, 2011 summary disposition order (SDO) and the August 11, 2010 judgment of the District Court of the First Circuit, with respect to the claims raised by Petitioner/Defendant-Appellant Kevin M. Yamahata. I would remand the case to the district court to dismiss the complaint without prejudice, based on the concurring and dissenting opinion in State v. Nesmith, __ Hawai'i __, __ P.3d __ (2012) (Acoba, J., concurring and dissenting).

DATED: Honolulu, Hawai'i, May 3, 2012.

/s/ Simeon R. Acoba, Jr.

